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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,603	04/28/2006	William Suttle Peters	13634.4010	3360
34313 7590 10/21/2008 ORRICK, HERRINGTON & SUTCLIFFE, LLP IP PROSECUTION DEPARTMENT 4 PARK PLAZA SUITE 1600 IRVINE, CA 92614-2558				
EXAMINER PORTER, JR. GARY A				
ART UNIT		PAPER NUMBER		
3766				
MAIL DATE		DELIVERY MODE		
10/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/595,603

**Applicant(s)**

PETERS, WILLIAM SUTTLE

**Examiner**

GARY A. PORTER, JR

**Art Unit**

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3 is/are rejected.  
7) ☒ Claim(s) 4-10 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 28 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-850)  
Paper No(s)/Mail Date 4/28/2006 and 1/22/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group 1, claims 1-10 in the reply filed on 9/30/2008 is acknowledged. The traversal is on the ground(s) that claims 1-10 and claim 14 are all drawn to a gas-line and recite that gas-line in different degrees of specificity. This is not found persuasive because, as stated in the requirement for restriction, the gas line itself makes no contribution over the prior art. Therefore, based on the defined special technical features of Group I, claims 1-10 and Group II, claim 14, mutual exclusivity of independent claims 1 and 14 is established.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

2. Claims 4-10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on any other multiple dependant claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Freed et al. (US Patent 6,132,363).
5. Regarding claim 1, Freed teaches a percutaneous gas-line for a medical device, the gas-line including a first gas-line part 28 adapted to be wholly implanted in a patient and having a first end adapted for sealing connection to the medical device and a second end with a connection fitting (Fig. 1); and a second gas-line part 18 adapted to be part-implanted and part-external and having a first (external) end adapted for sealing connection to an external driver (col. 4, lines 34-35) and a second (implanted) end adapted for removable sealing connection with the connection fitting 16 on the second end of the first gas-line part (Fig. 1,4; col. 4, lines 28-35; col. 9, lines 45-54).
6. In regards to claim 2, Freed teaches the second gas-line part is further adapted to be removable, for replacement, in the presence of persistent exit-site infection. This capability is shown by the detachable connection of the second gas-line part 18 to implanted connector 12 (Fig. 4)
7. With regards to claim 3, Freed teaches the first (external) end of the second gas line is removably connected to the external driver (col. 4, lines 34-35).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARY A. PORTER, JR whose telephone number is (571)270-5419. The examiner can normally be reached on Monday - Thursday, 8AM - 5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571)272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A. P./  
Examiner, Art Unit 3766

/Carl H. Layno/  
Supervisory Patent Examiner, Art  
Unit 3766